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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LONNIE MOORE et al., Plaintiffs and Respondents, v. DANIEL HOLBROOK, Defendant and Appellant.	D069686 (Super. Ct. No. 37-2007-00076120-CU-FR-CTL)

APPEAL from an order of the Superior Court of San Diego County, Joan M. Lewis, Judge. Affirmed.

Daniel Holbrook, in pro. per., for Defendant and Appellant.

Bryan Matthew Grundon for Plaintiffs and Respondents.

Representing himself in propria persona, Daniel Holbrook appeals from an order denying his motion to set aside the default judgment obtained by Lonnie and Ericka Moore (together, the Moores) in a lawsuit they filed against Holbrook in 2007.

As we will explain, Holbrook has not provided us with an adequate appellate record to enable us to review the trial court's order denying the motion to set aside the default judgment. Accordingly, we rely on the presumption that the trial court's order was correct, and we affirm the order.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Although our ability to set forth the factual and procedural background in this matter is hampered by the inadequate record provided by Holbrook, we set forth the following summary based upon the existing appellate record, at times relying upon uncorroborated statements in Holbrook's pleadings in the trial court.

In October 2007 the Moores filed this action against four defendants: (1) The AtVantage Group, Inc.; (2) AtVantage Capital Fund, LLC; (3) AtVantage Investment II, LLC; and (4) Holbrook. The appellate record contains only the first three pages of a presumably lengthy complaint, the first page of which indicates that the complaint alleged the following causes of action: fraud; three causes of action for breach of contract; breach of oral promise to pay; negligent misrepresentation; accounting; and declaratory relief. The subject matter of the dispute between the Moores and Holbrook is not clear from the record.

According to Holbrook, a petition for involuntary bankruptcy was filed as to The AtVantage Group, Inc.; Holbrook; and either AtVantage Investment II, LLC or

AtVantage Investment I, LLC on April 7, 2008.[1] According to Holbrook, the Moores then filed an adversary action in the bankruptcy court.

Holbrook states that on January 9, 2009, the trial court in this action entered default judgment against AtVantage Capital Fund, LLC and AtVantage Investment II, LLC. According to Holbrook, on February 28, 2013, the trial court amended the judgment to include a default judgment against Holbrook. Neither judgment appears in the appellate record.

In August 2015, more than two years after the entry of the default judgment against him, Holbrook filed a motion to set aside the judgment pursuant to Code of Civil Procedure section 473.[2] In his motion, Holbrook argued that the default judgment was void and that the time limits for seeking to set aside a default judgment in the Code of Civil Procedure did not apply. (See Code Civ. Proc., §§ 473, subd. (b) [six-month time limit judgment taken through defendant's mistake, inadvertence, surprise or excusable neglect], 473.5, subd. (a) [two-year time limit for motion to set aside default based on lack of actual notice of action; or 180-day time limit from date that defendant was served with written notice of default judgment].) The trial court denied the motion to set aside the default judgment.

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1 In different portions of the record, the third entity in the bankruptcy proceeding is identified as either AtVantage Investment II, LLC or AtVantage Investment I, LLC.

2 Holbrook was represented by counsel in the trial court but is now representing himself on appeal.

In support of his motion to set aside default, Holbrook made several arguments. We explain those arguments below. In the course of doing so, we identify the trial court's reasons for rejecting Holbrook's arguments, and we also comment on whether Holbrook has included sufficient material in the appellate record for us to evaluate those arguments on appeal.

First, Holbrook argued that the default judgment was void because he was improperly served with the complaint by substitute service at the inception of the litigation, as the process server failed to check a box on the proof of service stating that he exercised due diligence in attempting personal service. The trial court rejected this argument, concluding that service was proper and that in any event, Holbrook previously made a general appearance in the action and therefore waived his objection to defects in service. Holbrook has not included the proof of service in the appellate record, and he has accordingly not met his burden to submit the portion of the record that would enable us to review his argument that the proof of service was defective.[3]

Second, Holbrook argued that he was protected by the automatic bankruptcy stay until September 25, 2013, so that the trial court lacked jurisdiction to enter a default

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[3] Moreover, even had Holbrook supplied the proof of service as part of the appellate record, we would nevertheless affirm the trial court's ruling that Holbrook waived any defect in service by making a general appearance. Code of Civil Procedure section 410.50, subdivision (a) provides in part that "[a] general appearance by a party is equivalent to personal service of summons on such party," and case law explains that " ' "[a] general appearance operates as a consent to jurisdiction of the person, dispensing with the requirement of service of process, and curing defects in service." ' " (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 52.) The appellate record contains a minute order and a sign-in sheet, showing that on July 10, 2015, Holbrook's attorney appeared in court to oppose the assignment order sought by the Moores.

judgment against him in February 2013. Holbrook further argued that to the extent the default judgment against him was an *amendment* to the default judgment entered against AtVantage Capital Fund, LLC and AtVantage Investment II, LLC in 2009, the 2009 judgment was also void because AtVantage Capital Fund, LLC and AtVantage Investment II, LLC were also purportedly protected by the automatic bankruptcy stay in 2009. The trial court rejected Holbrook's arguments, concluding that the automatic stay was lifted as to Holbrook in May 2011. To support its ruling, the trial court apparently relied upon a document from the bankruptcy proceeding that the Moores had submitted in support of an earlier application for an assignment order against Holbrook. Holbrook has not included any documents from the bankruptcy court in the appellate record. Thus, we are unable to evaluate Holbrook's argument that he was protected by the automatic bankruptcy stay until September 25, 2013, or that the other defendants were protected by the automatic stay in 2009.

Third, Holbrook argued that the trial court did not follow proper procedures in amending the 2009 default judgment to add him to the judgment as an alter ego of the defendants identified in the 2009 judgment. The trial court rejected that argument, explaining that "this was not [a] situation where a judgment was obtained against a corporate defendant and then an unnamed individual was added to the judgment as the corporation's alter ego. Rather, in this case, Holbrook was named a [d]efendant from the beginning of the action." Although Holbrook does not focus on this issue in his appellate briefing, to the extent he raises this issue, he has not supplied an adequate appellate record for us to review it, as he has not included the full text of the complaint in the

appellate record, and he has not included any of the pleadings or orders relating to the default judgment entered against him in 2013.

Fourth, Holbrook argued that the amount awarded in the default judgment improperly included $62,000 that was purportedly not identified in the complaint. Although the trial court did not directly address this issue, we note that because Holbrook has included neither the full text of the complaint in the appellate record nor any of the pleadings or orders related to the default judgments, we are unable to evaluate his argument.

Finally, Holbrook argued that he was surprised by the default judgment as he believed the dispute with the Moores was being handled in the bankruptcy court, and he claimed that once he became aware of the default judgment, he immediately hired an attorney to move to set it aside. In addressing this argument, the trial court pointed out that Holbrook had not acted promptly once he learned of the default judgment and accordingly concluded that the relief sought by Holbrook was barred by the doctrine of laches. The trial court stated, "Although Holbrook in his . . . declaration stated he first learned of the judgment on June 15, 2015, that is refuted by his January 17, 2014 e[-]mail to Lonnie Moore evidencing he had notice of the judgment no later than that date." The e-mail that the trial court referenced was cited in the Moores' opposition brief in the trial court, which referred to an exhibit to the "Grundon Declaration." Holbrook has not included that declaration in the appellate record. Accordingly, we are not able to evaluate the portion of the trial court's ruling that was based on the doctrine of laches.

Holbrook filed a notice of appeal from the trial court's order denying the motion to set aside the default judgment.

II.

DISCUSSION

" 'It is the duty of an appellant to provide an adequate record to the court establishing error. Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. . . .' This principle stems from the well-established rule of appellate review that a judgment or order is presumed correct and the appellant has the burden of demonstrating prejudicial error." (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348, citations omitted; see also *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 [it is a fundamental rule of "appellate review that a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown"].) "[A] record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides . . . , but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed." (*Uniroyal Chemical Co. v. American Vanguard Corp.* (1988) 203 Cal.App.3d 285, 302.) When an appellant "fail[s] to provide an adequate record, appellant cannot meet his burden to show error and we must resolve any challenge to the order against him." (*Hotels Nevada*, at p. 348.) Issues raised without the provision of an adequate appellate record for us to evaluate them are "deemed waived." (*Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003.) " '[I]if the record is inadequate for meaningful review, the

appellant defaults and the decision of the trial court should be affirmed.' " (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.)

We are aware that Holbrook brings this appeal without the benefit of legal representation, which may be the reason that he submitted an inadequate appellate record. However, Holbrook's status as a self-represented litigant does not exempt him from the rules of appellate procedure or relieve him of his burden on appeal. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) We treat self-represented litigants like any other party, affording them " 'the same, but no greater consideration than other litigants and attorneys.' " (*Id.* at p. 1247.)

As we have explained, as to each of the arguments that Holbrook set forth in the trial court in support of his motion to set aside the default judgment, he has failed to provide an adequate appellate record for us to evaluate his arguments. Accordingly, we rely on the presumption that the trial court's order was correct, and we accordingly reject each of Holbrook's arguments on appeal.

DISPOSITION

The order is affirmed.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.